

STANDARD TERMS AND CONDITIONS
FOR PURCHASE ORDERS

This form contract is intended for use with professional purchase order services.

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**MASHANTUCKET PEQUOT TRIBAL NATION
STANDARD PURCHASE ORDER TERMS AND CONDITIONS**

1. DEFINITIONS

“Buyer” means collectively the Mashantucket Pequot Tribal Nation (“MPTN”), and/or any instrumentality thereof, including, but not limited to, the Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino, Pequot Pharmaceutical Network, Mashantucket Pequot Museum and Research Center, Two Trees Inn, Lake of Isles, and The Norwich Inn & Spa.

“Delivery Date” means the date or dates specified in the Purchase Order by which the Seller is required to deliver the goods or services.

Harmful Code” means any software intentionally designed to (i) disrupt, disable, harm, or impede operation, or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices.

“Intellectual Property Rights” means any and all tangible and intangible: (i) copyrights and other rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, and other industrial rights, and all improvements thereto; (v) all other intellectual property rights (or every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force.

“Money” means any cash, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind.

“Purchase Order” or “PO” means the purchase order, together with these terms and conditions, which constitute the entire and exclusive agreement referred to herein, and includes all sales or other agents, subcontractors, employees and distributors thereof.

“Seller” means the person, firm, company, limited liability company or corporation supplying the goods or services under Buyer’s Purchase Order and these Terms and Conditions.

“Work” means the software, deliverables, goods, services, or a combination thereof specified in the purchase order.

2. PURCHASE ORDER ACCEPTANCE

Seller consents to receive all documents, notices, disclosures or other communications electronically. Seller’s handwritten or electronic approval, acknowledgement of the Purchase Order, or commencement of performance constitutes Seller’s acceptance of these Terms and Conditions. Seller shall be bound by the provisions of the PO, including any special provisions on the face of the PO, unless Seller objects to such terms in writing prior to acceptance. In the event

of any objection, the PO may only be modified pursuant to a writing executed by a duly authorized representative of Buyer, and shall control over any contrary term or condition contained in any form or pre-printed document, acknowledgement or delivery receipt provided by Seller to Buyer.

3. DELIVERY

- a. Time is of the essence in Seller's performance of its obligations under the Purchase Order. Seller will immediately notify Buyer if Seller's timely performance under the Purchase Order is delayed or is likely to be delayed. Buyer's acceptance of Seller's Work will not constitute Buyer's waiver of any of Seller's obligations.
- b. Unless otherwise specified in the PO, all shipments shall be F.O.B. Mashantucket to the "ship to" address at Mashantucket or another delivery location specified in the PO. Delivery shall be in accordance with the schedule set forth in the PO, unless otherwise agreed to by Buyer. Seller will preserve, pack, package and handle any deliverable Work so as to protect the Work from loss or damage and in accordance with best commercial practices in the absence of any specifications Buyer may provide. Buyer reserves the right to cancel the PO, in whole or in part, if Seller should fail to make deliveries in accordance with the terms of the PO, or require Seller to ship goods, at Seller's expense, by expedited routing.

4. INSPECTION AND ACCEPTANCE OF WORK

Work purchased under the PO is subject to Buyer's inspection and approval within a reasonable time, but not less than sixty (60) days after delivery. Buyer, at its option, may reject all or any portion of such Work that does not conform in every respect with the terms of the PO, or require Seller to provide repair Work in conformity with the terms of the PO. As an alternative, if Buyer elects to accept non-conforming Work, Buyer, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the contract price thereof to compensate Buyer for the diminished value of the non-conforming Work. Any acceptance by Buyer shall not be deemed a waiver or settlement of any defect in such Work.

5. CASH DISCOUNT PERIOD

The cash discount period available to Buyer shall commence on the later to occur: Buyer's receipt of all Work, or the date of receipt of a properly executed invoice.

6. RISK OF LOSS

Until accepted by Buyer as provided above, Seller shall bear all risk of loss or damage, unless such loss or damage results from the negligence of Buyer.

7. REPRESENTATIONS AND WARRANTIES

- a. Seller represents and warrants to Buyer that:
 - (i) is has the full power to enter into the PO and to perform its obligations under the PO;

- (ii) all Work delivered under the PO will be free from defects in material and workmanship, and conform to applicable specifications;
 - (iii) it has good title to the Work provided to Buyer and passes such title to Buyer free from any liens, security interests or other encumbrances;
 - (iv) the Work is merchantable and fit for the purpose intended;
 - (v) the Work, and the Buyer's use of the Work, do not and will not infringe upon any third party's intellectual rights, whether contractual or statutory;
 - (vi) any software supplied by Seller does not contain any Harmful Code, including any software intentionally designed to (i) disrupt, disable, harm, or impede operation, or (ii) impair operation based on the lapse of time, including but not limited to viruses, worms, time bombs, time locks, drop-dead devices, access codes, security keys, back doors, or trap door devices;
 - (vii) it will not use, disclose, or transfer across borders any information that may identify an individual ("Personal Data") that is processed for or on behalf of Buyer, except to the extent necessary to perform under this PO;
 - (viii) all services shall be completed in a professional, workmanlike manner with the degree of skill and care that is required by current, good, and sound professional procedures and in accordance with any applicable specifications; and
 - (ix) the Work provided under the PO will not infringe or violate any Intellectual Property Rights or other rights of any third party.
- b. To the extent applicable, Seller shall assign all express warranties of any manufacturer of the Work for the benefit of Buyer.
- c. All materials furnished by Seller under this Agreement shall be new and of a first rate quality. No substitution or alternative materials may be made without the express written approval of the Buyer.
- d. **SURVIVAL OF REPRESENTATIONS AND WARRANTIES.** If, within two (2) years of the Seller's substantial completion of the services, any defect in materials or workmanship is discovered by Buyer, then Seller, after receiving written notice from Buyer of such defect, shall correct it promptly. If Seller fails to correct any defect within thirty (30) days following the receipt of written notice by Buyer, then Buyer may proceed to have such defective work or materials corrected at the expense of Seller and Seller agrees to reimburse the costs incurred by Buyer. The provisions of this paragraph shall be in addition to any express warranties provided by or through Seller for materials delivered to Buyer under this Agreement. All such warranties are hereby assigned to Buyer and all work performed shall be done in a manner that shall preserve such warranties. All warranties shall be deemed an integral part of this Agreement. The services to be provided by Seller shall be performed skillfully, carefully, diligently and in a competent manner and shall be fit for the purpose intended.
- e. Buyer warrants and represents to Seller that it has the full power to enter into the PO and to perform its obligations under the PO.

8. ASSIGNMENT OR DELEGATION OF RIGHTS

Seller may not assign or delegate its rights or duties hereunder without the express written consent of Buyer, which Buyer will not unreasonably withhold. Any attempted assignment or delegation

undertaken by Seller without Buyer's prior written consent may be voided by Buyer, at its sole option.

9. CHANGE, CANCELLATION AND TERMINATION

- a. The PO can be changed, terminated, suspended or canceled by Buyer without cause, upon thirty (30) days prior written notification to Seller. Upon receipt of notice of such termination, Seller will inform Buyer of the extent of which it has completed performance as of the date of such notice, and Seller will collect and deliver to Buyer whatever Work then exists. Buyer will pay Seller for all Work performed and accepted through the effective date of the termination.
- b. Either party may terminate the PO immediately by delivering written notice to the other party for any material breach not cured within thirty (30) days of receipt of notice of the breach.
- c. In the event of a change, Buyer and Seller will make a fair and equitable modification to their rights and obligations under the PO, if such change results in an increase or decrease in costs to be incurred or time needed to complete performance of the PO. Termination or cancellation for convenience by Buyer will entitle Seller to payment for only the Work delivered, received and accepted, and not subsequently rejected by Buyer. Buyer may immediately terminate the PO without prejudice to any right or remedy, after giving Seller notice of any breach by Seller of its obligations hereunder.
- d. Any obligations or duties which, by their nature, extend beyond the expiration or termination of the PO shall survive the expiration or termination of the PO.

10. TAXES

- a. Except as otherwise expressly provided in the PO, the contract price shall include all applicable federal, state and local taxes of any kind. Work purchased by Buyer for its use on the Mashantucket Pequot Tribal Reservation is not subject to Connecticut Sales Tax. Buyer will identify all Work that is not subject to Connecticut Sales Tax and will provide Seller with a valid State tax exemption certificate.
- b. Where any relevant taxation authority imposes any income tax on the payment for Work provided by Seller, Buyer may deduct such withholding tax from the payment to Seller and remit such withholding tax to the relevant taxing authority on behalf of Seller. The determination of the applicability of a withholding tax is at Buyer's sole discretion. Seller shall be solely responsible for filing the appropriate tax forms and paying all taxes and fees, including estimated taxes and employment taxes due with respect to Seller's payment received from Buyer.

11. USE OF BUYER'S NAME

Seller agrees not to use the name of Buyer, the Seller's relationship with the Buyer, or disclose the existence of the PO in any advertising, promotion, press release, presentation, or other written or oral disclosure without the prior written consent of Buyer.

12. COVENANTS AGAINST KICKBACKS

- a. For purposes of this subsection, a “Tribal Contract” means a written contract with the Mashantucket Pequot Tribal Nation, Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino, Pequot Pharmaceutical Network, Mashantucket Pequot Museum and Research Center, Two Trees Inn, Lake of Isles and The Norwich Inn & Spa or any other political subdivision of the Tribe or with any tribally owned business.
- b. For purposes of this subsection, a “Kickback” means any Money that is provided or is offered, as herein provided, for the purpose of obtaining or maintaining a Tribal Contract or for rewarding favorable treatment in connection with any Tribal Contract.
- c. Seller represents, warrants, covenants and agrees that neither Seller nor its affiliates or any subcontractors (including any of their officers or employees) has provided or attempted to provide, either directly or indirectly, any Kickback to any employee of the MPTN or to any member of the Tribe. Seller further warrants, covenants and agrees that neither Seller nor its affiliates nor any subcontractors (including any of their officers or employees) will, in the future, provide or attempt to provide, either directly or indirectly, any Kickback to any employee of the MPTN or to any member of the Tribe.
- d. Failure to abide by the provisions of this section may, without further notice, result in the immediate termination of this Agreement.

13. MINORITY BUSINESS ENTERPRISES

- a. Seller shall target 15% of all subcontract work, of any tier, to be awarded to Native American Business Enterprises, Minority Business Enterprises, and/or Woman Owned Business Enterprises (“MBE”). Seller shall report quarterly and shall submit a summary report prior to final payment in a format as specified by the Purchasing Agent. No price factoring is to be considered in subcontract selection. Seller’s performance regarding MBE placements will be considered as evaluative criteria for this Agreement and for future contract awards.
- b. Seller shall not discriminate against any subcontractors or employee regarding race, religion, color, sex, age, physical condition or national origin.

14. FORCE MAJEURE AND EXCUSE

- a. Neither party shall be liable to the other for any delay or failure in performing its obligations under the PO to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("*Force Majeure* Event"). *Force Majeure* Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances.
- b. Seller shall use all diligent efforts to end the failure or delay of its performance and to ensure that the effects of any *Force Majeure* event are minimized. In no event shall Seller

be excused for any inability to obtain goods or services necessary for Seller's performance, nor for any labor dispute involving employees of Seller, Buyer, any subcontractor of either, nor any carrier or any other person. Seller's economic hardship or changes in market conditions are not considered *Force Majeure* Events.

15. INDEMNIFICATION

- a. As used in this Section and for the purposes of Seller's insurance, "Buyer" shall be deemed to include MPTN's Tribal Council, and Buyer's officers, directors, employees, agents, guests and invitees.
- b. General Indemnification: Seller agrees to indemnify and hold harmless Buyer from and against any and all claims, actions, demands, damages, liability, cost or other expenses (including professional fees and costs as incurred), and the cost of enforcing any right to indemnification hereunder arising from or by reason of Seller's performance hereunder, except to the extent that such claims, actions, damages or other losses result from Buyer's gross negligence or willful misconduct.
- c. Intellectual Property Indemnification: Seller shall, at its expense, defend, indemnify and hold harmless Buyer against any and all claims, actions, demands, damages, liability, cost or other expenses (including professional fees and costs as incurred), arising out of or in connection with any claim that Buyer's use or possession of the Work infringes or misappropriates the patent, copyright, trade secret or other Intellectual Property Right of any third party.
- d. In no event shall the Seller enter into any settlement of a claim involving Buyer without the Buyer's prior written consent.

16. LIABILITY

- a. NOTWITHSTANDING ANYTHING ELSE IN THE PO OR OTHERWISE, BUYER WILL NOT BE LIABLE TO SELLER WITH RESPECT TO THE SUBJECT MATTER OF THE PO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT BUYER PAID TO SELLER FOR THE WORK.
- b. IN NO EVENT WILL BUYER BE LIABLE TO SELLER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PO, WHETHER OR NOT BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. The above limitations will apply notwithstanding any failure of essential purpose of any limited remedy provided herein. Nothing in the PO limits either party's liability for bodily injury of a person, death, or physical damage to property or any liability that cannot be excluded under applicable law.

17. INSURANCE

- a. At all times during its performance hereunder Seller shall obtain and keep in force workers' compensation insurance for all of its employees within statutory limits, and commercial general liability insurance, including coverage for product and completed operations, contractual liability, vendors broad form liability of not less than \$1,000,000 per occurrence, and \$2,000,000 in aggregate, and automobile liability for all owned, non-owned and hired vehicles used in carrying out the PO, with limits of not less than \$1,000,000 Combined Single Limit as well as Excess Liability Insurance of not less than \$1,000,000. Insurance must be provided by an insurance company licensed to do business in the State of Connecticut with a minimum AM Best rating of A VII or Weiss rating B or better. Buyer reserves the right to require additional coverages or higher limits where warranted. Seller shall provide Buyer with a certificate of insurance evidencing Seller's compliance with the foregoing insurance provisions upon request. All policy certificates shall be supplied to MPTN and shall specifically include the relevant RFP number or PO number and a brief description of the covered scope of work. Policy certificates shall be mailed to:

MPTN Risk Management Department
P.O. Box 3255
Mashantucket, CT 06338

- b. BUYER'S OBLIGATIONS UNDER THE PO ARE DEPENDENT UPON SELLER'S MEETING THE INSURANCE REQUIREMENTS SET FORTH ABOVE.
- c. Seller shall provide the MPTN with a certificate of said insurance naming the "Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino" and "the Mashantucket Pequot Tribal Nation and its Council", and their respective officers, employees and agents as additional insureds on the General Liability Policy. The General Liability Policy shall include a waiver of subrogation in favor of the additional insureds as respects to the General Liability Insurance, contain a severability of interest clause, and contain conditions requiring insurers to notify additional insureds not less than thirty (30) days in advance of cancellation or non-renewal.

18. PERSONAL DATA AND SECURITY

- a. As a result of this PO, Seller may obtain certain information relating to identified or identifiable individuals ("Personal Data"). Seller shall have no right, title, or interest in Personal Data obtained as a result of this PO.
- b. To the extent it actually processes Personal Data, Seller will:
 - (i) implement and maintain appropriate technical and organizational measures and other protections for Personal Data (including, without limitation, not loading any Personal Data provided to Seller on any laptop computer or any portable storage media that can be removed from Seller's premises unless such Personal Data has been encrypted);
 - (ii) report to Buyer's Office of Legal Counsel any breaches of security of Personal Data

immediately, but no later than 24 hours, after discovery;

- (iii) cooperate fully with Buyer in investigating any breach;
- (iv) cooperate fully with Buyer's requests for access to, correction of, or destruction of Personal Data in Seller's possession; and
- (v) comply with all instructions or other requirements provided or issued by Buyer from time to time relating to Personal Data.

19 WORK FOR HIRE, OWNERSHIP AND LICENSE

- a. Unless otherwise specified in a PO and except as provided in this Section 19, services performed under the PO shall be deemed to be a work made for hire and made in the course of the services rendered, Buyer is the sole and exclusive owner of all deliverables specified in or otherwise provided under a PO ("Deliverables"), and Seller hereby irrevocably assigns and transfers to Buyer all of its worldwide right and title to, and interest in, the Deliverables, including all associated Intellectual Property Rights. To the extent that exclusive title or ownership rights in a Deliverable may not originally vest in Buyer as contemplated hereunder, Seller irrevocably assigns transfers and conveys to Buyer all right, title and interest therein.
- b. Unless otherwise specified in a PO, Seller will obtain and assign to Buyer a nonexclusive, royalty-free, worldwide, perpetual, irrevocable, transferable, sub-licensable license to use all third party Intellectual Property Rights incorporated into, required to use, or delivered with the Deliverable. Seller will deliver copies of the above releases and licenses to Buyer upon Buyer's request.

20. COMPLIANCE WITH LAWS

Seller shall comply with all laws and governmental rules, regulations and POs applicable to the goods delivered and/or services rendered under the PO, including, but not limited to, obtaining all necessary licenses and permits, including, but not limited to, those which may be required by MPTN's Land Use Commission for work performed in Mashantucket.

21. HAZARDOUS MATERIALS

All packaging, transportation and handling of hazardous materials shall be in accordance with applicable state, federal and tribal laws and regulations pertaining to hazardous materials.

All Sellers who provide hazardous materials shall with each shipment provide Safety Data Sheets for each product delivered to the end-user representative detailed on the originating purchase order. In addition, prior to any hazardous materials being delivered to Mashantucket, Connecticut, a copy of the said Safety Data Sheets must also be provided to the Mashantucket Pequot Tribal Nation's Director of Natural Resources, Protection and Regulatory Affairs at PO Box 3202, Mashantucket, CT 06338.

22. BUYER'S PROPERTY

All materials, including documents, drawings, specifications and tools, furnished or paid for by Buyer shall remain the exclusive property of Buyer. All documents, drawings, and specifications shall be considered confidential and not disclosed to any third party. All materials shall be returned to Buyer upon Seller's completion of its obligations under the PO. Seller assumes all liability for loss or damage of such materials, excluding normal wear and tear.

23. INSOLVENCY

In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment of an assignee for the benefit of creditors or of a receiver, Buyer shall be entitled to cancel the PO, in whole or in part.

24. INDEPENDENT CONTRACTOR

Seller is an independent contractor for all purposes of the PO, and has no express or implied authority to bind Buyer by contract or otherwise.

25. CONFIDENTIALITY

- a. For purposes of this purchase order, "Confidential Information" includes, but is not limited to, data relating to business operations, customer data, financial and business records, and any and all documents, software, data, forms, and other materials obtained by one contracting party from the other contracting party: (i) that have been marked as confidential, or (ii) that due to their character and nature, a reasonable person under like circumstances would treat as confidential.
- b. Seller acknowledges that it may be exposed to Confidential Information of Buyer. Seller shall not, directly or indirectly, use, disseminate, disclose, or in any way reveal or use beyond the scope of authority granted by Buyer all or any part of the Confidential Information, which it may be exposed to, and shall use such Confidential Information only to the extent specifically authorized by Buyer.
- c. Both Buyer and Seller shall not reverse-engineer, decompile, or disassemble any software disclosed to it and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the other contracting party.
- d. Upon cancellation or termination of the PO for any reason whatsoever, Seller shall turn over to Buyer any and all copies it may have of Confidential Information. Seller acknowledges that this provision shall survive the termination of the PO. The confidentiality provisions of this Section shall apply to and be binding upon Seller's officers, employees, and representatives.

26. WAIVER

Waiver of a breach of any provision of the PO shall not constitute waiver of future compliance with such provision nor shall it be construed as a waiver of any other breach.

27. SEVERABILITY

If any provision of the PO, including any provision of these Terms and Conditions, shall be declared illegal, void or otherwise unenforceable, the remaining provisions shall not be affected and will remain in full force and effect.

28. DISPUTE RESOLUTION/GOVERNING LAW

The Seller and MPTN agree that any dispute that may arise under the Agreement is subject to the jurisdiction of the Mashantucket Pequot Tribal Court (“Tribal Court”) and interpretation of the Agreement is governed by the laws of the MPTN. The decision of the Tribal Court shall be enforceable in any court of competent jurisdiction. Nothing in this Paragraph or in this Agreement shall prohibit or in any way limit MPTN’s right to seek reimbursement of monies paid for Workers Compensation benefits or Health Benefits, whether MPTN seeks such reimbursement by intervening in a lawsuit pending in a state or federal court or by bringing an independent action in any court having jurisdiction thereof, including state and federal courts.

29. RIGHTS AND REMEDIES

The rights and remedies of Buyer and Seller set forth in the PO are cumulative and in addition to any other rights or remedies that they may have at law or in equity.

30. AUDIT

Buyer reserves the right to perform a financial or inventory audit as deemed necessary during or after the performance by Seller of its obligations under the PO. Buyer will be permitted to conduct such audit with any or all of its Procurement, Financial or Internal Audit resources. Buyer further reserves the right to conduct such audits with the assistance of a third party accounting /auditing firm.

31. VENDOR REGISTRATION AND GAMING COMPLIANCE

Seller shall accurately complete and submit, at the direction of the MPTN Procurement Department, a “New Vendor Information Form” (“NVIF”). Seller shall notify MPTN Procurement Department in writing of any changes in the information supplied on the NVIF. Seller shall cooperate in any investigation conducted by the MPTN through its MPTN Gaming Commission, or other duly authorized MPTN investigative entity. Failure to abide by the requirements of this paragraph is an event of default and may result in the immediate termination of this PO.

32. PRECEDENCE

In the event that the various parts of the PO are inconsistent, the following order of preference will apply: (i) special terms and conditions on the face of the Purchase Order, (ii) these Terms and Conditions, and (iii) all other attachments incorporated in the PO by reference.

33. OFFICIAL ADDRESSES FOR NOTICES

Seller recognizes that Mashantucket is a separate and sovereign jurisdiction and as such that the correct addresses will be appropriately utilized for all shipments and communications in the course of doing business with each of MPTN's properties, as well as the Mashantucket Pequot Tribal Nation. Where applicable to the subject transaction, Seller must recognize Mashantucket as a separate and distinct "service area". For any Notices required in connection with this Purchase Order, Seller agrees to reflect (as appropriate) MPTN's addresses as follows:

MPTN/Foxwoods Resort Casino
c/o 350 Trolley Line Boulevard
PO Box 3777
Mashantucket CT 06338-3777
Attention: Chief Procurement Officer

With a copy to:
MPTN/Foxwoods Resort Casino
c/o 2 Matt's Path
P.O. Box 3060
Mashantucket, CT 06338-3060
Attention: General Counsel

END OF AGREEMENT